vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.735 OF 2002

Vijay Ramchandra Diwar ... Appellant

v/s.

State of Maharashtra ... Respondent

None for the Appellant
Mr.V.B.K. Deshmukh, APP, for Respondent

CORAM: **V.G. PALSHIKAR &**
SMT.NISHITA MHATRE, JJ.

DATED: **OCTOBER 9, 2006**

ORAL JUDGMENT (PER SMT.MHATRE, J.):

. The accused has challenged the judgment and order of the Additional Sessions Judge, Satara in Sessions Case No.138 of 2001. The accused who was 17 years of age at the time he committed the offence has been convicted and sentenced under section 302 of the Indian Penal Code.

2. The case of the prosecution is that the accused and his mother had a grievance against the deceased since he was allotted a house in the Gharkul scheme. On 15.9.2000, the deceased returned home from work as a labourer. At about 8 pm, the accused went to the house of the deceased and called out to him. The deceased went out of the house. There was a heated exchange of words between them. The accused whipped out a sword which he had hidden behind him and struck the deceased

forcefully on the forehead. The deceased fell to the ground with bleeding injuries. The wife of the deceased raised an alarm by shouting that the accused had given her husband a blow on the forehead. The accused ran away from the spot. The victim was taken to Cottage hospital, Karad and thereafter was referred to another hospital. He succumbed to the injuries sustained by him at about 10 pm. An FIR was lodged by the wife of the deceased against the accused. The body was sent for postmortem examination. The accused was arrested at about 12 noon on 16.9.2000. He was charged for having committed the offence punishable under section 302 of the Indian Penal Code. After the charge was framed, the trial was committed to the Court of Sessions.

3. The prosecution has relied on 8 witnesses to establish its case against the accused. PW3, the wife of the deceased is an eye witness to the incident. She has deposed about the grudge borne by the accused against the deceased, since he was allotted a house under the Gharkul scheme. The accused was related to the deceased, being the son of the stepsister of the deceased. This witness has spoken about a quarrel her husband had with the mother of the accused regarding sanctioning of houses under the Gharkul scheme. In fact, the mother of the accused, Sanjivani, had lodged a complaint against the deceased with the Gram Panchayat of the village. This witness has then stated that the

deceased was lying down after a hard day's work as a labourer on 15.9.2000. At around 8 pm, the accused called out to the deceased. The deceased went out of the house to the site of the house sanctioned under the Gharkul scheme. This site was near the her residence according to PW3. She heard the words "Diwar Diwar" and she went out of the house. She found her husband and the accused quarrelling before she could call the Sarpanch of the Village to intervene in the quarrel, the accused had whipped out a sword and struck the deceased. This witness has seen the accused strike a blow with the sword on the forehead of her husband. The deceased fell to the ground. The accused ran away towards the railway tracks, holding the sword in his hand. PW3 immediately shouted and alerted others around that the accused had beaten her husband. The victim lay in a pool of blood due to the bleeding injuries sustained by him. Many persons from the village gathered around the spot after hearing her cries. The witness has stated in his examination in chief that she saw the incident in the light of the electric bulb. She has also stated that it was a full moon night and thus she was able to see the accused who had struck the deceased a blow with a sword. However, in the cross-examination this witness has admitted that there was no electricity supply on that day. However, the witness has stated that there was sufficient light for her to see the accused. This witness therefore, has

categorically stated in her evidence that she saw the accused strike a blow on the forehead of her husband, the deceased. This blow was struck with a sword. After she raised a hue and cry, the accused fled from the scene of offence. Her evidence is cogent and believable. The cross-examination has not elicited any contradictions or discrepancies in the testimony of PW3.

PW4 is the son of the deceased and PW3. He was 10 years old when his deposition was recorded in Court. He has stated that he left the house with his sister to purchase chocolates after 8 pm. The shop where he purchased the chocolates was at a distance of 10 or 15 minutes from his house. While proceeding to the shop the accused had enquired of him regarding the whereabouts of his father. This witness has seen the accused run out of his house with a sword in his hand. When he went in, he found his mother shouting while his father was silent. However, not much reliance can be placed on the testimony of this witness since he has admitted that he was tutored by his mother to answer the questions in a particular manner.

PW1 and PW2 are the panch witnesses. PW1 has spoken about the recovery of the sword from the railway yard. The recovery was made at the instance of the accused. PW2 is the panch witness for the seizure of the blood stained clothes of the accused. Both these witnesses

have proved the respective panchanamas which they had endorsed.

PW5 is the neighbour of the deceased. This witness had seen the accused running away from the house of the deceased. She had seen the deceased lying on the ground after sustaining the injury from the accused. However, the crossexamination of this witness indicates that her eye sight was not good. She in fact could not identify the accused in Court from the witness box but was able to do so only when the accused was at a distance of one foot away from her. Therefore, the evidence of this witness is not very hopeful to the prosecution.

The next witness examined by the prosecution is PW6, the Doctor. He was the medical officer at Cottage hospital, Karad who performed the postmortem examination at about 3.45 pm on 16.9.2000. The cause of death is haemorrhagic shock due to the incised wound on the left hemisphere of the brain, with cutting of left parietal and left frontal bone. The witness had deposed that the injury sustained would be possible with a single blow with a sword. He has denied that the injury is possible if the deceased had fallen on a sharp and hard object.

PW7 is the medical officer attached to Krishna hospital where the deceased was taken from the Cottage hospital. This witness has stated that after examination of the

patient, he succumbed to his injuries within 20 minutes from his admission into the hospital. The body was therefore, sent for postmortem examination. The Doctor has opined that the deceased would not have survived even if the medical treatment had been available at the spot.

The last witness examined by the prosecution is PW8, the Investigating Officer, who has arrested the accused.

4. We have perused the entire evidence on record with the assistance of the learned Assistant Public Prosecutor. The assault on the deceased by the accused has been proved by PW3 who was an eye witness to the incident. Her ocular evidence is matched by the medical evide nce on record which shows that the deceased had sustained an injury on the left parietal region. There was a fracture of her frontal bone. The blow struck by the accused was so forceful that the frontal bone was fractured and the brain was incised. The Doctors examined by the prosecution PW6 and PW7 have both opined that the injuries sustained by the deceased were on account of a sharp edged weapon being used. The recovery of the sword at the instance of the accused is corroborative evidence which can be accepted. Both PW3 and PW4 had seen the accused run away from the scene of offence towards railway yard. The recovery of the sword was made from this railway yard and therefore, can be

accepted.

5. In our view, therefore, the learned Sessions Judge has correctly found that the accused was responsible for committing culpable homicide.

6. There is no doubt that the accused is responsible for committing culpable homicide. However, whether this would amount to murder is a question that we will now consider. The evidence on record indicates that the accused had struck the deceased once with the sword. This blow was forceful enough to cause the death of the deceased. However, the intention to cause death is not established. No doubt, there were disputes in respect of the house allotted under the Gharkul scheme. However, this would not necessarily mean that the accused intended to kill the deceased. Looking to the age of the accused which was 17 years at the time the case went to trial and the circumstances of the assault we find that the offence which the accused has committed would be punishable unde section 304 Part II, Indian Penal Code. We have considered the judgments of the Apex Court in *State of M.P. v/s. Kalu Ram,* **(2004) 12 SCC 543,** *Shivappa Buddappa Kolkar v/s. State of Karnataka,* **(2005) SCC (Cri) 93** and *Ravi Kumar v/s. State of Punjab*, **(2005) 9 SCC 315**. We are of the opinion that the appellant should be convicted under section 304 Part II of the Indian Penal Code since this

is also a case where a single blow was inflicted by the accused which proved to be fatal.

7. Therefore, the Appeal is partly allowed. The conviction and sentence under section 302 of the Indian Penal Code is set aside. Instead, the appellant is convicted under section 304 Part II of the Indian Penal Code and sentenced to suffer 6 years rigorous imprisonment, which he has already undergone.